ORDINANCE No. 111992

COUNCIL BILL No. 104523

AN ORDINANCE taking advantage of opportunities extended by 26 U.S.C. § 414(h) and Chapter 227, Laws of 1984 for deferral of federal income taxes upon employee contributions to the Law Enforcement Officers and Fire Fighters' Retirement Systems, the Washington Public Employees' Retirement System, and the City Employees' Retirement System; authorizing the making of the "employer's pick-up" (payment of the employee's contribution and the making of a corresponding reduction in wages or salaries); making revisions to the City Employees' Retirement System to conform with 26 U.S.C. § 401(a); and adding new sections to the Seattle Municipal Code in connection therewith.

10/25/84 PASS

COMPTROLLER FILE No.

Introduced: SEP 17 1984	By: City Attorney
Referred: SEP 17 1984	To: Finance
Referred:	To:
Referred:	To:
Reported: OCT 29 1984	Second Reading: OCT 29 1984
Third Reading: OCT 29 1984	Signed: OCT 29 1984
Presented to Mayor: OCT 30 1984	Approved: NOV 8 1984
Returned to City Clerk: NOV 8 1984	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Law Department

LWP

The City of Seattle--Legisla

REPORT OF COMMIT

Honorable President:

Your Committee on BUDGET / FINANCE

to which was referred the within Council Bill No. 104
report that we have considered the same and respectfully rec

DO PASS

signed
PK
LW
DS
DJ

H. Sellers

Committee Ch

Law Department

LVP

The City of Seattle--Legislative Department

Date Reported and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on BUDGET / FINANCE

to which was referred the within Council Bill No. 104528

report that we have considered the same and respectfully recommend that the same:

DO PASS

RK

YG

ES

DS

H. Adora Sierra

Committee Chair

JB:hh/pm
09-12-84
I:Ordl.1

ORDINANCE 111992

AN ORDINANCE taking advantage of opportunities extended by 26 U.S.C. § 414(h) and Chapter 227, Laws of 1984 for deferral of federal income taxes upon employee contributions to the Law Enforcement Officers and Fire Fighters' Retirement Systems, the Washington Public Employees' Retirement System, and the City Employees' Retirement System; authorizing the making of the "employer's pick-up" (payment of the employee's contribution and the making of a corresponding reduction in wages or salaries); making revisions to the City Employees' Retirement System to conform with 26 U.S.C. § 401(a); and adding new sections to the Seattle Municipal Code in connection therewith.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City hereby elects to extend to members of the Law Enforcement Officers and Fire Fighters' Retirement System and the Washington Public Employees' Retirement System employed by the City the tax deferral benefits allowed under 26 U.S.C. § 414(h) and Chapter 227, Laws of 1984 with respect to compensation payable for pay ~~periods~~ warrant dates commencing on or after January 1, 1985 and the Personnel Director is authorized to notify the Director of the Department of Retirement Systems of the State of Washington as to the City's election and to explain the effects of this election to all members of the system. In making this election, the City reserves the power to withdraw its exercise of this option as to each retirement system as contemplated by Section 3(2) of Chapter 227, Laws of 1984, in any later calendar year.

Section 2. There is added to Seattle Municipal Code Chapter 4.20, a new section, designated Section 4.20.600, as follows:

4.20.600 Contributions to LEOFF; PERS--Adjustment for federal income tax purposes. To carry out the City's election to take advantage of the opportunites extended by 26 U.S.C

CS 10.2

414(h) and Chapter 227, Laws of 1984 for deferral of federal income taxes upon member's contributions to the Law Enforcement Officers and Fire Fighters' Retirement System and to the Washington Public Employees' Retirement System, the City will pay those members' contributions under RCW 41.26.080(1) and 41.26.450 and RCW 41.40.330(1) and 41.40.650 respectively for pay ~~periods~~ warrant dates commencing on or after January 1, 1985, and will reduce the member's wages or salary by the amount of the City's contribution so paid. The foregoing payment and wage/salary reduction is made under these conditions and limitations:

a. This arrangement is made for purposes of federal income taxation. An employee's wages or salary for purposes of the Federal Insurance Contributions Act (social security tax), the City salary and wage ordinances, and other purposes shall be computed as if the foregoing contribution and corresponding salary or wage reduction had not been made; and

b. The City may withdraw its election to make such adjustments as contemplated by Section 3 (2) of Chapter 227, Laws of 1984, and no affected member shall be entitled to continuance of the adjustment thereafter.

Section 3. There is added to Seattle Municipal code Chapter 4.20 a new section, designated 4.20.610, as follows:

4.20.610 Contributions to City Employees' Retirement System--Adjustment for federal income tax purposes. The City hereby elects to extend to members of the City Employees' Retirement System the tax deferral benefits allowed by 26 U.S.C. 414(h) and Chapter 27, Laws of 1984. For such purposes, the City will pay the member's contributions to the City Employees' Retirement System contemplated by SMC § 4.36.110 for pay

MR

~~periods~~ warrant dates commencing on or after January 1, 1985, and will reduce the member's wages or salary by the amount of the City's contribution so paid. The City contribution made under this section, plus accumulated interest, shall be paid to a member upon the withdrawal of the member's documented contributions pursuant to SMC § 4.36.190.

An employee's wage or salary for purposes of the Federal Insurance Contributions Act (social security tax), for purposes of workers' compensation, and for all purposes other than federal income taxation shall be computed as if the foregoing contribution and corresponding reduction in a member's wage or salary had not been made.

The City reserves the right to discontinue this arrangement for a City contribution and corresponding wage or salary reduction at any time as to compensation earned afterwards. No affected member shall have any contract right to compel the City to continue the arrangement should the City decide to pay the member his or her full salary or wage and then require that the member pay to the City Employees' Retirement System the member's contribution contemplated by SMC § 4.36.110.

Section 4. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.360, as follows:

4.36.360. Trust fund. The retirement fund shall be a trust fund for the exclusive benefit of the members of the City Employees' Retirement System and their beneficiaries. No part of the corpus or income of the retirement fund shall be used for or diverted to, purposes other than for the exclusive benefit of the members of the system or their beneficiaries and the payment of fees and expenses of maintaining and administering the system.

This section shall be interpreted to allow the following:

(1) A return of a contribution to the City or its application as a credit on future contributions, after the Board determines that the City has paid or over-paid the contribution under a mistake of fact;

(2) The making of refunds required by law; and

(3) Termination of the retirement system and distribution of its assets after all liabilities with respect to the members of the retirement system and their beneficiaries have been satisfied.

Section 5. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.370, as follows:

4.36.370 Status of benefits in event of termination of system. If the City terminates or partially terminates the retirement system, members shall have a nonforfeitable right to benefits accrued prior to the date of such termination or partial termination, to the extent funded as of that date, or the amounts credited to the employees' accounts. As used in this section, "terminate" means to discontinue the system completely without a comparable replacement plan; "partially terminate" means to exclude a segment of employees from coverage without the provision of a comparable replacement; and "nonforfeitable" means that a member's or beneficiary's right to an immediate or deferred benefit that arises from the member's City service is unconditional and legally enforceable against the retirement system to the extent then accrued, except that rights to a benefit based upon the City's contribution and completion of a minimum term of City service may be lost by death of the member before the term has expired.

Section 6. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.380, as follows:

4.36.380 Maximum benefits payable. The maximum benefits payable to any member shall not exceed the limitation for defined benefit plans for qualified pension trusts established by 26 U.S.C. § 415, a copy of which is attached hereto as Appendix "A" and by this reference incorporated herein.

The Board of Administration shall determine this limitation, advise members on inquiry as to its amount, and include a general description of the limitations in its annual report to members.

Section 7. Any action consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

(To be used for all Ordinances except Emergency.)

Section 8. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 29th day of October, 1984,

and signed by me in open session in authentication of its passage this 29th day of October, 1984.

President of the City Council.

Approved by me this 8th day of November, 1984.

Mayor.

Filed by me this 8th day of November, 1984.

Attest:

City Comptroller and City Clerk.

(SEAL)

Published

By

Deputy Clerk.

CS 8.1.6

Association of Washington Cities

1073 SOUTH CAPITOL WAY • OLYMPIA, WASHINGTON 98501 • TELEPHONE 206-357-8555

July 11, 1984

TO: City Officials

FROM: Kathleen Collins, Assistant to the Director

SUBJECT: Notice to Employees Regarding SSB 4477--Deferred Compensation Program

Many cities have expressed an interest in SSB 4477, the deferred compensation measure passed by the legislature this last session. This new law allows the employer to "pick up" the employee's share of retirement contributions, creating a tax deferral for the employee. Another way of viewing the law is that it allows the employer not to report the employee's share of retirement contributions for federal income tax purposes. This measure is mandatory for the state and optional for local governments.

The soonest you can start participating in this deferred compensation program is September 1, 1984, provided you meet the 45-day filing and notice requirements. For a September 1 implementation, you must file your notice with the Department of Retirement Systems by July 18. Local government employers can start the program on the first of any month after September 1.

In a June 5 memo from the Department of Retirement Systems, Dr. Hollister referenced an informational memo that would be sent to state employees. The attached memo is a revision of the state's informational memo which was prepared by the Office of Financial Management. I have amended the memo so that the references are appropriate to municipal employees. You may use this as a guide for a memo to your employees; however, information specific to your own situation will have to be filled in.

One other word of caution -- the memo reflects OFM's most current understanding of the effects of the law. At this time, this understanding is not totally complete. There have been no court decisions or formally published rulings from the Internal Revenue Service on the relationship between the deferral of retirement contributions and the two types of existing deferred compensation programs. One type is the voluntary deferred compensation program offered by a variety of brokers and authorized under IRC Section 457. A second type refers to the purchase of tax sheltered annuities and is under IRC Section 403(b). Very few, if any, cities participate in tax sheltered annuity programs. Rather, cities usually offer the more common deferred compensation programs authorized under IRC Section 457. If you do provide a tax sheltered annuity program, call us before proceeding. The information provided in the attached memo addresses only the deferred compensation programs under IRC Section 457.

In order to formally clarify the relationships between the IRC sections, OFM is seeking a "private letter ruling" from the IRS. The results are not expected for several months and we will let you know should they differ from what is stated in the attached memo.

If you have questions on this new law, call either Sheryl Wilson at Retirement Systems, 753-5283, or Kathleen Collins at the Association, SCAN 234-4137 or toll-free 1-800-562-8982.

ATTACHMENT A

NOTICE TO EMPLOYEES

EFFECT OF TAX DEFERRAL OF RETIREMENT CONTRIBUTIONS
RESULTING FROM ENACTMENT OF
SUBSTITUTE SENATE BILL (S.S.B.) 4477
(CHAPTER 227, WASHINGTON LAWS, 1984 REGULAR SESSION)

S.S.B. 4477 was enacted as permitted under Section 414(h) of the federal Internal Revenue Code (IRC). The provisions of S.S.B. 4477 become effective on (fill in date) and will be mandatory without exception for employees in (enter PERS, LEOFF, or Judicial Retirement System, as applicable). All employees are advised that Section 1(2) of S.S.B. 4477 states:

> "Should the legislature revoke any benefit allowed under this act, no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right."

When this program goes into effect on (date), employees belonging to (fill in appropriate retirement system(s)) will no longer make their retirement contributions in after-tax dollars. Instead, their retirement contributions will be paid by the employees' employer directly to the applicable retirement system and will be in addition to the existing employer contributions required by state law. These payments are referred to under IRC Section 414(h) as an "Employer Pick-Up."

Further, effective (date), these employees' gross salary will be reduced by their required retirement contribution amount. This gross salary reduction will be for federal income tax purposes only. Employees' gross pay for all other non-Internal Revenue Service (IRS) purposes such as for social security, retirement compensation reporting, retirement benefit calculations and so forth will be their full gross pay, including the "picked-up" retirement contribution. Since employees' current taxable income will be reduced, their net "take-home" pay will be increased slightly, namely by the amount of federal income tax that previously would have been attributable to their retirement contribution.

Currently, the contribution rates for employees in the categories listed above are (list only the rates for the applicable systems):

6% of gross salary for PERS 1;

5.11% of gross salary for PERS 2;

6% of gross salary for LEOFF 1;

7.9% of gross salary for LEOFF 2;

6.5% of gross salary for Retirement of Judges Retirement System; and

7.5% of gross salary for Judicial Retirement System.

The "picked-up" retirement contribution provided by S.S.B. 4477 will be credited to the employee's retirement account. Income tax liability on the employee's retirement contribution will be deferred until that money is actually received by the employee from the retirement system as a retirement benefit, or as a refund after termination of employment, or by the employee's estate or beneficiary as a death benefit. An accounting of all contributions on which taxes have been paid will be maintained for each employee by the Department of Retirement Systems in Olympia.

The following table illustrates the effect of this legislation on a monthly salary basis for a married PERS 1 employee claiming zero allowances:

ATTACHMENT B

PERS 1 EXAMPLE

	Current	Effective 9-1-84
• EMPLOYEE'S MONTHLY GROSS SALARY	$ 2,000	$ 2,000
Less:		
•• Employer "pick-up" of an employee's retirement contribution	NOT APPLICABLE	-120
• EMPLOYEE'S MONTHLY GROSS FEDERAL TAXABLE INCOME	$ 2,000	$ 1,880
Less:		
•• PERS 1 Employee Retirement Deduction	-120	-0-
•• Federal Withholding Tax	-297	-270
•• Social Security Tax*	-134	-134
• EMPLOYEE'S MONTHLY NET "Take Home" PAY	$ 1,449	$ 1,476
• INCREASED MONTHLY NET "Take Home" PAY		$ 27

* The Social Security Tax Deduction is based on the "Employee's Monthly Gross Salary" of $2,000.

(USE THE FOLLOWING PARAGRAPHS ONLY IF YOU CURRENTLY HAVE A VOLUNTARY DEFERRED COMPENSATION PROGRAM IN PLACE. SUBSTITUTE THE SPECIFIC NAME OF YOUR PROGRAM IN THE APPROPRIATE PLACES.)

There are additional effects resulting from S.S.B. 4477 for those employees who participate in a voluntary deferred compensation program under IRC Section 457. The maximum deferral allowed under this program is 25% of gross taxable income to a maximum of $7,500. First, the employee's federal gross taxable income, which is the basis for calculating the maximum amount an employee may legally defer under a voluntary deferred compensation program, may be reduced. Consequently, an employee's maximum deferral amount under this program may be reduced. Secondly, the IRS has not formally stated how it views the relationship between IRC Section 414(h), the deferral of retirement contributions, and Section 457, the voluntary deferred compensation program. The question is whether or not the deferred retirement amount "picked-up" must be included in as part of the total an employee can legally defer under the existing voluntary program. The following example illustrates the question:

> An employee, in PERS 1, earning $20,000 annually will have a 6% employer pick-up of $1,200 as a result of S.S.B. 4477. Therefore, after September 1, 1984, the employee's annual taxable income would be $18,800 ($20,000 - 1,200 = $18,800). An employee utilizing IRC Section 457, a voluntary deferred compensation program, can defer up to 25% of gross taxable income to a maximum of $7,500. In this example, the deferral would be $4,700. The question then becomes, is the $1,200 retirement deferral separate from or part of the $4,700 IRC Section 457 deferral?

Representatives of the state's Office of Financial Management (OFM) have been in contact with the IRS. OFM is requesting a "private letter ruling" from the IRS on this relationship. Informally, representatives of IRS indicate that the retirement "pick-up" deferral would not be considered part of the maximum allowed under the existing deferred compensation program, but

rather would be separate because it is not part of what the IRS considers "includable compensation" for IRC 457 purposes. For specific calculation information, employees should contact their deferred compensation administrator. If the IRS "private letter ruling" response, which is expected to take several months to obtain, differs from the information understanding stated above, OFM will provide additional information at that time.

Due to the extremely complex nature of deferrals, employees should seek the advice of their own personal tax/financial consultants in determining what adjustments they may wish to make to their own voluntary deferral program(s) as a result of the implementation of S.S.B. 4477. The general understanding in the enactment of S.S.B. 4477 was that it would be beneficial for employees because of its tax deferral nature. The effect for each employee may be different depending upon individual circumstances. Consequently, employees are strongly urged to seek counsel if they currently participate in a voluntary deferral program, other than an Individual Retirement Account.

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:
Mrs. M. Scheytt
Telephone Number:
(202) 566-4700
Refer Reply to:
E:EP:T:2
Date:
SEP 8 1981

Received 9/21/81

Mr. Tyrone C. Fahner
Attorney General
State of Illinois
Springfield, Illinois 62706

Legend:

State A:	Illinois
Group M:	Employees of the State of Illinois described in section 14-103.05 of the State Employees Retirement System of Illinois
Group N:	Employees of the State of Illinois described in section 14-103.05(1) through (7) of the State Employees Retirement System of Illinois
Plan X:	State Employees Retirement System of Illinois

Gentlemen:

This is in response to your recent letter in which you requested several rulings concerning the federal income tax consequences of certain contributions to and distributions from Plan X.

The facts upon which your ruling requests are based are as follows. State A enacted legislation which created Plan X, a plan qualified under section 401(a) of the Internal Revenue Code and the trust of which is tax-exempt under section 501(a) of the Code.

Group M is comprised of State A employees who are required to participate in Plan X beginning with their first day of employment with State A pursuant to section 14-103.05 of Plan X, while Group N is comprised of employees who are exempt from mandatory participation in Plan X pursuant to section 14.103.05(1) through (7) of Plan X. Historically, Group M employees were required by the terms of Plan X to contribute a stated percentage of their compensation to Plan X as employee contributions. These mandatory contributions were effectuated through payroll deductions.

State A has recently enacted legislation affecting compensation earned after December 31, 1981, which provides in pertinent part:

> Each department shall pick up the employee contributions required by Section 14-133 for all compensation earned after December 31, 1981, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code; however, each department shall continue to withhold Federal and State income taxes based upon these contributions until the Internal Revenue Service or the Federal courts rule that pursuant

ATTACHMENT C

to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The department shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The department may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. If employee contributions are picked up they shall be treated for all purposes of this Article 14 in the same manner and to the extent as employee contributions made prior to the date picked up.

Based on the foregoing, you request the following rulings to the effect:

1. That no part of the amount of the pick-up by the State, as employer, is includible in the gross income of Group M employees.

2. That a distribution of the amount picked up on behalf of Group M employees, either through a retirement pension or lump-sum payment, will be considered a distribution of employer contributions taxable under section 402 of the Code.

3. That for purposes of the application of section 414(h)(2) of the Code, it is immaterial whether an employer picks up contributions through a reduction in salary, an offset against future salary increases or a combination of both.

4. That the language contained in the amendments to article 14 of Plan X satisfies the requirements of section 414(h)(2) of the Code.

Section 414(h) of the Code provides for the tax treatment of certain contributions:

(1) In general. Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed --

(A) To an employees' trust described in section 401(a), or

(B) Under a plan described in section 403(a) or 405(a), shall not be treated as having been paid by the employer if it is designated as an employee contribution.

(2) Designation by units of government.

For purpose of paragraph (1), in the case of any plan established by the government of any state or political subdivision thereof,

> or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

With respect to the exception stated in section 414(h)(2) of the Code, the following explanation is contained in H.R. Rep. No. 93-807, 93d Cong., 2nd Sess. 1 (1974), 1974-3 C.B. Supp. 236, 380.

> However, some state and local government plans designate certain amounts as being employee contributions even though statutes authorize or require the relevant governmental units or agencies to "pick-up" some or all of what would otherwise be the employee's contribution. In other words, the governmental unit pays all or part of the employee's contribution but does not withhold this amount from the employee's salary. In this situation, the portion of the contribution which is "picked-up" by the government is, in substance, an employer contribution for purposes of Federal tax law, not withstanding the fact that for certain purposes of State Law the contribution may be designated as an employee contribution. Accordingly, the bill provides in the case of a government pick-up plan, that the portion of the contribution which is paid by the government, with no withholding from the employee's salary, will be treated as an employer contribution under the tax law.

The federal income tax treatment to be accorded contributions which are "picked-up" by the employer within the meaning of Code section 414(h)(2) is specified in Rev. Rul. 77-462, 1977-2 C.B. 358. In that revenue ruling the employer school district agreed to assume and pay the amounts employees were required by state law to contribute to a state pension plan. Rev. Rul. 77-462 concluded that the school district's picked-up contributions to the plan are excluded from the employee's gross income until such time as they are distributed or made available to the employees, at which time they are taxable under section 402(a) of the Code.

The issue of whether contributions have been picked up by an employer within the meaning of Code section 414(h) is addressed in Rev. Rul. 81-35, 1981-5 I.R.B. 11 (February 2, 1981) and Rev. Rul. 81-36, 1981-5 I.R.B. 12 (February 2, 1981). These revenue rulings establish that the following two criteria must be met: (1) the employer must specify that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee and (2) the employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the pension plan.

Plan X, as amended, satisfies the criteria set forth in Rev. Rul. 81-35 and Rev. Rul 81-36 because (1) it provides that employee contributions picked up by each department of State A will be designated as employer contributions

for federal income tax purposes, and (2) Group M employees are not given an option to receive the contributed amounts directly rather than having them contributed to Plan X.

In addition, Plan X is established by the government of State A, and is qualified under section 401(a) of the Code, and therefore is a governmental plan within the scope of section 414(h)(2).

Accordingly, in response to ruling request 1, we conclude that no part of the amount of the pick-up by State A, as employer, is includible in the gross income of Group M employees for the taxable year in which the pick-up is made.

In response to ruling request 2, we conclude that a distribution of the amounts picked up on behalf of Group M employees, either through a retirement pension or as lump-sum payments, will be considered a distribution of employer contributions taxable under section 402 of the Code.

In response to ruling request 4, we conclude that the language contained in the amendment to article 14 of Plan X satisfies the requirements of section 414(h)(2) of the Code for Group M employees.

In regard to ruling request 3, Rev. Rul. 81-35 and Rev. Rul. 81-36 do not require, as a condition to amounts being considered picked up under Code section 414(h)(2), that the pick-up be effectuated in a particular manner, such as an offset against future salary increases. The governmental plan in Rev. Rul. 81-36, which provided for the pick-up of employee contributions through a reduction in the employees' salary, was found to meet the requirements of section 414(h).

Plan X satisfies all the requirements set forth in Rev. Rul. 81-35 and Rev. Rul. 81-36 which are necessary for employee contributions to be considered picked up pursuant to Code section 414(h). Accordingly, in response to ruling request 3, we conclude that for purposes of the application of section 414(h)(2) of the Code, it is immaterial whether an employer picks up contributions through a reduction in salary, an offset against future salary increases, or a combination of both.

These rulings are based on the assumption that Plan X will be qualified under Code section 401(a) and its related trust tax-exempt under section 501(a) at the time of the proposed contributions and distributions.

Sincerely yours,

John J. Swieca

John J. Swieca
Acting Chief, Employee Plans
Technical Branch

From 1982 — Report on State Pe. ion Commission
Edward N. Friend + Co

Louisiana, Michigan, Minnesota, Missouri and Texas participate only in CONSSS.

At the same time Congress is trying to impose more requirements on public pension systems, the Internal Revenue Service is reducing the reporting requirements for public pension systems. Beginning with plan years commencing in 1982, public pension systems no longer file Form 5500-G.

EMPLOYER PICK-UP OF EMPLOYEE CONTRIBUTIONS

In the traditional sense, the phrase "employer pick-up of employee contributions" means, simply, that the employer pays the employees' contributions. The advantage is that employees do not have to include the "picked up" contributions in their incomes at the time the contributions are made. Recognized disadvantages of such a procedure include a reduction in pay related benefits, such as benefits from the jurisdiction's pension and from Social Security, and the possibility that employees could be stripped of their pay raises which might have been traded away for the "pick up." Also, the psychological advantage of employee involvement is removed.

Although some of the disadvantages of the traditional employer pick-up of employee contributions can be overcome (for example, by increasing benefit formulas and creating severance accounts for terminating participants), employees are still left with reduced Social Security benefits and without a sense of participation.

A 1978 amendment to Section 414(h) of the Internal Revenue Code (IRC) made possible a modified approach which eliminated the disadvantages. The modified method appears in IRC Section 414(h)(2) and, therefore, is referred to as "Internal Revenue Code Section 414(h)(2) employer pick-up of employee contributions" throughout this publication.

IRC Section 414(h)(2) permits mandatory employee contributions to governmental retirement systems to be made on a pre-tax basis. Technically, the employer breaks the employees' salaries into two parts, one of which is sent directly to the pension system and the other of which is sent to the employee. The advantages of this are that the employees' contributions are not included in income for Federal income tax purposes (thereby providing a tax shelter of employee contributions), that the contributions can be included in income for Social Security tax and benefit purposes (thereby preserving the level of the employees' Social Security and other benefits) and that the picked up contributions can be withdrawn by the employee upon pre-retirement termination of employment.

The disadvantages of the IRC Section 414(h)(2) employer pick-up of employee contributions are that the concept is difficult to explain to employees and legislators and that distributions are fully taxable. Short service employees who withdraw their picked up contributions upon pre-retirement termination of employment will incur an increased federal tax liability, unless the "picked up" amounts are rolled over into an IRA.

In the recent period of economic adversity, IRC Section 414(h)(2) employer pick-up of employee contributions has become an attractive planning modification because it provides the employee increased after-tax income without supplemental employer financing.

During 1982, IRC Section 414(h)(2) employer pick-up of employee contributions was implemented in all seventeen of Illinois' retirement systems, in five of Kentucky's retirement systems (all systems are eligible), and in North Carolina's Teachers' and State Employees' Retirement Systems.

In addition, legislation passed allowing the IRC Section 414(h)(2) employer pick-up of employee contributions in Alabama's State Employees' Retirement System and Teachers' Retirement System, the state and statewide retirement systems in Louisiana, and Utah's State Employees' Retirement System.

Legislation permitting IRC Section 414(h)(2) employer pick-up of employee contributions will be introduced during 1983 in Idaho, Nebraska and Virginia. Similar legislation previously failed to pass in Arizona and will be reintroduced in 1983.

Some states have decided against incorporating this recently publicized contribution method in their retirement systems. The most often cited reason for not implementing IRC Section 414(h)(2) employer pick-up of employee contributions is that the retirement system has a high employee turn-over rate and picking up the employee contributions means that short service employees will have a fairly large increase in taxable income in the year they terminate employment.

UNISEX ACTUARIAL TABLES

The use of sex-distinct, as opposed to unisex, actuarial tables received nationwide attention when the U. S. Court of Appeals for the Ninth Circuit affirmed a Federal district court order enjoining the State of Arizona from using sex-distinct actuarial factors in converting lump-sum accumulations to annuities

the gross income of the employee; Rev. Rul. 81-35 distinguished.

Rev. Rul. 81-36

Advice has been requested whether, pursuant to section 414(h)(2) of the Internal Revenue Code, an employee may exclude from current gross income, for federal income tax purposes, contributions made by the employing governmental unit to a pension plan qualified under section 401(a) under the circumstances described below.

A is employed by a city within a state whose statutes require that employees contribute 10 percent of salary to the state's pension plan. The plan is qualified under section 401(a) of the Code, and its trust is exempt from federal income tax under section 501(a).

In 1977 the union representing *A* negotiated an agreement with the city under which the city was to contribute 10 percent of covered employees' salaries to the state's qualified pension plan.

Prior to the agreement, *A*'s salary was $10,000, and *A* contributed $1,000 to the plan. As a result of the union agreement with *A*'s employer, *A*'s salary was reduced to $9.000, and the city contributed $1,000 to the plan; this $1,000 contribution was considered part of *A*'s salary for purposes of determining the required employee contribution.

The city's contributions were designated as employee contributions but, in addition, were specified by the city as being paid by the employer in lieu of employee contributions. Amounts paid by the city thus were to satisfy the employee's obligation to contribute 10 percent of salary to the state's pension plan.

Section 414(h)(1) of the Code states that amounts contributed to a plan qualified under section 401(a) may not, for tax purposes, be treated as employer contributions if they are designated as employee contributions. Section 414(h)(2) provides an exception to this rule, however, by allowing contributions (otherwise designated as employee contributions) to government plans to be treated as employer contributions if the employer "picks up" the contributions.

Rev. Rul. 77-462, 1977-2 C.B. 358, specifies the federal income tax treatment to be accorded contributions "picked-up," within the meaning of section 414(h)(2) of the Code, by a governmental unit and paid to a plan qualified under section 401(a). It concludes that such "picked-up" contributions are not includible in the gross income of the employees until these amounts are distributed or made available to the employees.

Contributions are considered "picked-up" by the employer, for purposes of section 414(h)(2) of the Code, if two criteria are satisfied. First, the employer must specify that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee. Second, the employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the pension plan.

Rev. Rul. 81-35, page 255, this Bulletin, deals with a situation where the employee entered into a voluntary agreement with the employing governmental unit to have certain contributions made to the state's qualified pension plan. Because the employee was given the option of having these contributions made to the plan rather than receiving these amounts directly, the amounts contributed were determined not to be "picked-up" within the meaning of section 414(h)(2) of the Code.

In the above situation, *A*'s union, on behalf of *A* and all other covered employees, negotiated an agreement with *A*'s employer concerning the amounts to be picked up and contributed to the state's qualified pension plan. *A* thus was required to have the $1,000 contributed to the pension plan and was not given the option of instead receiving the contributed amounts directly. Thus $1,000 also was designated as being paid by the employer in lieu of required employee contributions.

Accordingly, *A* may, pursuant to section 414(h)(2) of the Code, exclude from current gross income, for federal income tax purposes, all of the contributions made by the employing governmental unit to its qualified pension plan. Such "picked-up" contributions are not includible in *A*'s gross income until distributed or made available, as provided in Rev. Rul. 77-462.

Rev. Rul. 81-35 is distinguished.

Affiliated service group. Information is provided with respect to when various businesses will be considered an affiliated service group and how this aggregation affects the retirement plans maintained by members of the group. Rev. Ruls. 68-370 and 75-35 obsoleted.

Rev. Rul. 81-105

SECTION 1. PURPOSE

This revenue ruling provides guidance with respect to the application of section 414(m) of the Internal Revenue Code, as added by the Miscellaneous Revenue Act of 1980, Pub. L. 96-605, 1980-2 C.B. 702. The guidance emphasizes the interaction of section 414(m) of the Code with the nondiscrimination requirements of sections 410(b) and 401(a)(4) in response to questions that have arisen as to how those sections interact. This revenue ruling also obsoletes Rev. Rul. 68-370, 1968-2 C.B. 174, and Rev. Rul. 75-35, 1975-1 C.B. 131.

SEC. 2. APPLICABLE LAW

.01 Section 414(m)(1) of the Code provides that, for purposes of certain employee benefit requirements designated in section 414(m)(4), except to the extent otherwise provided in regu-

ternal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved December 23, 1980.

EMIL M. SUNLEY,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 29, 1980, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1980, 45 F.R. 86428)

Section 414.—Definitions and Special Rules

Contributions; government "pick up" plan. A situation illustrates the application of criteria for determining if employee contributions to a governmental plan are "picked up" by an employer within the meaning of section 414(h)(2) of the Code and, thus, whether such contributions are excludable from the gross income of the employee; Rev. Ruls. 77-462 and 81-36 distinguished.

Rev. Rul. 81-35

Advice has been requested whether, pursuant to section 414(h)(2) of the Internal Revenue Code, an employee may exclude from current gross income, for federal income tax purposes, contributions made by the employing governmental unit to a pension plan qualified under section 401(a) under the circumstances described below.

A is employed by a school district within a state whose statutes require that employees contribute 7 percent of gross salary to the state's pension plan. The plan is qualified under section 401(a) of the Code, and its trust is exempt from federal income tax under section 501(a).

A entered into an agreement with the school district in 1977 pursuant to which the school district contributed 7 percent of *A*'s salary, on *A*'s behalf, to the state's qualified pension plan. The agreement designated these amounts as employee contributions and provided that amounts paid by the school district were to satisfy *A*'s obligation to contribute 7 percent of salary to the state's pension plan. The agreement in question was voluntary and was not entered into as a condition of *A*'s employment.

Section 414(h)(1) of the Code states that amounts contributed to a plan qualified under section 401(a) may not, for tax purposes, be treated as employer contributions if they are designated as employee contributions. Section 414(h)(2) provides an exception to this rule, however, by allowing contributions (otherwise designated as employee contributions) to government plans to be treated as employer contributions if the employer "picks up" the contributions.

Rev. Rul. 77-462, 1977-2 C.B. 358, specifies the federal income tax treatment to be accorded contributions "picked-up," within the meaning of section 414(h)(2) of the Code, by a governmental unit and paid to a plan qualified under section 401(a). It concludes that such "picked-up" contributions are not includible in the gross income of the employees until these amounts are distributed or made available to the employees.

Contributions are considered "picked-up" by the employer, for purposes of section 414(h)(2) of the Code, if two criteria are satisfied. First, the employer must specify that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee. Second, the employee must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the pension plan.

Rev. Rul. 81-36, this page, this Bulletin, concludes that certain amounts contributed by the employer were considered to be "picked-up," within the meaning of section 414(h)(2) of the Code, because (1) the employer specified that the contributions were paid by the employer in lieu of contributions by the employee, and (2) the employee, pursuant to a union-negotiated agreement, had no option to receive the contributed amounts directly instead of having them paid by the employer to the pension plan.

The employer in the above example did specify that the contributions, designated as employee contributions, were paid by the employer in lieu of contributions by the employee. *A*, however, voluntarily entered into an agreement with *A*'s employer to have these contributions made to the state's pension plan. Thus, *A* did exercise an option to have these contributions made to the pension plan rather than receiving the amounts directly and, therefore, such amounts are not considered "picked-up," within the meaning of section 414(h)(2), because they fail to satisfy the criteria stated above.

Accordingly, *A* may not, pursuant to section 414(h)(2) of the Code, exclude from gross income, for federal income tax purposes, contributions made by the employing governmental unit to its qualified pension plan.

The circumstances outlined here are distinguished from those presented in Rev. Rul. 77-462. That ruling applies only to government "pick-up" plans which meet the requirements of section 414(h)(2) of the Code.

Rev. Rul. 81-36 is also distinguished.

Contributions; government "pick up" plan. A situation illustrates the application of criteria for determining if employee contributions to a governmental plan are "picked up" by an employer within the meaning of section 414(h)(2) of the Code and, thus, whether such contributions are excludable from

FORM 886-A (REV APRIL 1958)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Seattle City Employees' Retirement System		

Before the Special Taxation provisions of section 414(h)(1) of the Internal Revenue Code (Code) can be applied to employee contributions the Plan must be "...an employees' trust described in section 401(a)..." of the Code.

The Employee Retirement Income Security Act of 1974 exempted governmental plans from the participation, vesting, funding, and most other requirements which are generally applicable to qualified plans. However, the Plan must contain provisions for the following;

1) Non reversion language (see section 401(a)(2) of the Code)

Sample Language; Exclusive Benefit: This plan is established for the exclusive benefit of the participants or their beneficiaries. Except as provided in section 403(c) of the Employee Retirement Income Security Act of 1974, it shall be impossible at any time for any part of the trust fund or any accounts in the trust to be used for or diverted to purposes other than for the exclusive benefit of participants or their beneficiaries and the payment of fees and expenses of maintaining and administering this plan and trust.

2) Full vesting upon termination of Plan: (see section 411(e)(2) and section 401(a)(7) of the Code)

Sample Language: In the event of the termination or partial termination of this plan, the rights of all affected employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be nonforfeitable.

3) Limits on benefits and/or contributions. (see section 401(a)(16) and section 415 of the Code).

Since the sample language is so lengthy, I have attached samples as an exhibit rather than try to incorporate it in this letter. Refer to the attached.

(Note to sponsor: The above provision is an acceptable method for permitting deductible employee contributions. However, the plan may permit any employee, whether or not a participant, to make deductible contributions. The classification of employees eligible to make deductible employee contributions and who have the opportunity to actually make them must be nondiscriminatory. Any classification which is potentially discriminatory must be elected in the adoption agreement. The plan may only permit voluntary contributions to be deductible. The provision may require a designation scheme different from that in the sample language, it may permit the employee to elect payroll deductions for purposes of making deductible contributions, it may restrict distributions of deductible employee contributions, it may permit the use of these contributions to purchase life insurance if it specifically provides that amounts so used are treated as distributions, and it does not have to accept rollovers.)

36. Document Provision:

Statement of Requirement: Separate account-employee contributions, IRC §411(d)(5), Regs. §1.411(c)-1(b), Rev. Rul. 80-155.

Sample Plan Language:

A separate account shall be maintained by the trustee for the nondeductible voluntary employee contributions of each participant. The assets of the trust will be valued annually at fair market value as of the last day of the plan year. On such date, the earnings and losses of the trust attributable to the accumulated nondeductible voluntary contributions will be allocated to each participant's nondeductible voluntary contributions account in the ratio that such account balance bears to all such account balances.

SECTION 415 LIMITATIONS:

37. Document Provision:

Statement of Requirement: Limitation on benefits, IRC §415, Regs. §1.415-1.

Sample Plan Language:

Article_____ Limitation on Benefits

Section 1. This section applies regardless of whether any participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any participant is or has ever been a participant in another qualified plan maintained by the employer, section 2 is also applicable to that participant's benefits.

Section 1.1. The annual benefit otherwise payable to a participant at any time will not exceed the maximum permissible amount. If the benefit the participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible amount, the rate of accrual will be reduced so that the annual benefit will equal the maximum permissible amount.

Section 1.2. If a participant makes nondeductible employee contributions under the terms of this plan, the lesser of (a) the amount of such contributions in excess of 6 percent of the participant's compensation, or (b) one-half of such contributions, which are credited for the limitation year, is treated as an annual addition to a qualified defined contribution plan, for purposes of sections 1.1 and 2.2 of this article.

Section 1.3. The limitation in section 1.1 is deemed satisfied if the annual benefit payable to a participant is not more than $1,000 multipled by the participant's number of years of service (not to exceed 10) with the employer.

Section 2. This section applies if any participant is covered, or has ever been covered, by another qualified plan maintained by the employer.

Section 2.1. If a participant is, or has ever been, covered under more than one defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible amount. ~~The employer will choose in section _____ of the adoption agreement the method by which the plans will meet this limitation.~~

Section 2.2. If the employer maintains, or at any time maintained, one or more qualified defined contribution plans covering any participant in this plan, the sum of the participant's defined contribution fraction and defined benefit fraction will not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the participant under this plan will be limited, ~~in accordance with section _____ of the adoption agreement.~~

Section 3. In the case of an individual who was a participant in one or more defined benefit plans of the employer before September 30, 1983, the application of the limitations of this article shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's accrued benefit under all such defined benefit plans as of September 30, 1983. The preceding sentence applies only if all such defined benefit plans met the requirements of section 415 of the Code, as in effect on July 1, 1982, for all limitation years beginning before September 30, 1983.

Section 4. Definitions.

Section 4.1 Annual benefit: A retirement benefit under the plan which is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this article. The interest rate assumption used to determine actuarial equivalence will be the greater of the interest rate specified in section _____ of this plan or 5 percent. The annual benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (a) the value of a qualified joint and survivor annuity, (b) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (c) the value of post-retirement cost-of-living increases made in accordance with the Federal Income Tax Regulations.

Section 4.2. Compensation: A participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:

(a) Employer contributions to a plan of deferred compensation which are not included in the employee's gross income for the taxable year in which contributed or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;

(b) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(d) Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the employee).

Compensation for any limitation year is the compensation actually paid or includible in gross income during such year.

Section 4.3. Defined benefit fraction: A fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of 125 percent of the dollar limitation in effect for the limitation year under section 415(b)(1)(A) of the Internal Revenue Code or 140 percent of the highest average compensation.

Notwithstanding the above, if the participant was a participant in a plan in existence on July 1, 1982, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the participant had accrued as of the later of September 30, 1983 or the end of the last limitation year beginning before January 1, 1983. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of section 415 as in effect at the end of the 1982 limitation year. For purposes of this paragraph, a master or prototype plan with an opinion letter issued before January 1, 1983, which was adopted by the employer on or before September 30, 1983, is treated as a plan in existence on July 1, 1982.

Section 4.4. Defined contribution fraction: A fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years, (including the annual additions attributable to the participant's nondeductible employee contributions to this and all other defined benefit plans (whether or not terminated) maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer).

The maximum aggregate amount in any limitation year is the lesser of 125 percent of the dollar limitation in effect under section 415(c)(1)(A) of the Code or 35 percent of the participant's compensation for such year.

If the employee was a participant in one or more defined contribution plans maintained by the employer which were in existence on July 1, 1982, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the later of September 30, 1983 or the end of the last limitation year beginning before January 1, 1983. This adjustment will also be made if at the end of the last limitation year beginning before January 1, 1983, the sum of the fractions exceeds 1.0 because of accruals or additions that were made before the limitations of this article became

effective to any plans of the employer in existence on July 1, 1982. For purposes of this paragraph, a master or prototype plan with an opinion letter issued before January 1, 1983, which is adopted by the employer on or before September 30, 1983, is treated as a plan in existence on July 1, 1982.

Section 4.5. Employer: The employer that adopts this plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Internal Revenue Code, as modified by section 415(h)), commonly controlled trades or businesses (as defined in section 414(c) as modified by section 415(h)), or affiliated service groups (as defined in section 414(m)) of which the adopting employer is a part.

Section 4.6. Highest average compensation: The average compensation for the three consecutive years of service with the employer that produces the highest average. A year of service with the employer is the 12-consecutive month period defined in section _____ of the adoption agreement.

Section 4.7. Limitation year: A calendar year, or the 12-consecutive month period elected by the employer in section _____ of the adoption agreement. All qualified plans maintained by the employer must use the same limitation year.

Section 4.8. Maximum permissible amount: The lesser of $90,000 or 100 percent of the participant's highest average compensation. If the annual benefit commences before age 62, the maximum permissible amount may not exceed the lesser of the actuarial equivalent of a $90,000 annual benefit beginning at age 62 or the participant's highest average compensation. This actuarial adjustment will not reduce the $90,000 limitation below $75,000 if the benefit begins at or after age 55. If the annual benefit commences before age 55, the adjusted dollar limitation to the maximum permissible amount is the greater of (a) the actuarial equivalent of a $75,000 annual benefit commencing at age 55, or (b) the actuarial equivalent of a $90,000 annual benefit beginning at age 62. To determine actuarial equivalence the interest rate assumption is the greater of the rate specified in ~~section _____ of~~ the plan or 5 percent. If the annual benefit commences after age 65, the benefit may not exceed the lesser of the actuarial equivalent of a $90,000 annual benefit beginning at age 65 or the participant's highest average compensation. To determine actuarial equivalence after age 65, in the preceding sentence, the interest rate assumption used is the lesser of the rate specified ~~in section _____ of~~ the plan or 5 percent.

Effective on January 1, 1986, and each January 1 thereafter, the $90,000 limitation above will be automatically adjusted to the new dollar limitation determined by the Commissioner of Internal Revenue for that calendar year. The new limitation will apply to limitation years ending within the calendar year of the date of the adjustment.

Notwithstanding the above, if the participant was a participant in a plan in existence on July 1, 1982, the maximum permissible amount shall not be less than the participant's current accrued benefit.

If the annual benefit commences when the participant has less than 10 years of service with the employer, the maximum permissible amount otherwise defined above is reduced by one-tenth for each year of service less than ten.

Section 4.9. Current accrued benefit: A participant's annual benefit (including optional benefit forms) accrued as of the later of the end of the last limitation year beginning before January 1, 1983, or September 30, 1983, but determined without regard to changes in the plan or cost-of-living increases occurring after July 1, 1982.

Section 4.10. Projected annual benefit: The annual benefit as defined in section 4.1 of this article, to which the participant would be entitled under the terms of the plan assuming:

(a) the participant will continue employment until normal retirement age under the plan (or current age, if later), and

(b) the participant's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan will remain constant for all future limitation years.

Section 4.11. Annual additions: The sum of the following amounts credited to a participant's account for the limitation year:

(a) employer contributions;
(b) forfeitures; and
(c) the lesser of (i) one-half of the nondeductible employee contributions or (ii) the nondeductible employee contributions in excess of 6 percent of the participant's compensation for the limitation year.

~~Sample Adoption Agreement Language:~~

A. If you maintain or ever maintained another qualified plan other than paired plan A ____ in which any participant in this plan is (or was) a participant or could possibly become a participant, the adopter must complete this section.

(Note to sponsor: Leave space for the adopting employer to provide language which will satisfy the 1.0 limitation of §415(e) of the Code. Such language must preclude employer discretion as required under Regs. §1.415-1(d).)

(Note to sponsor: If this plan is paired with another plan maintained by the employer, this plan must provide for the appropriate reductions under IRC §415(e). See LRM ∅89 for appropriate language.)

(Note to sponsor: If the employer maintains or has ever maintained another defined benefit plan, such employer must provide language which will assure that the maximum permissible amount is never exceeded. In the alternative, the employer may identify the other plan which will provide suitable language so that the maximum permissible amount is never exceeded.)

B. The limitation year is the following 12-consecutive month period:

C. For purposes of calculating the participant's highest average compensation, a year of service is the following 12-consecutive month period:

City of Seattle

ORDINANCE 111992

AN ORDINANCE taking advantage of opportunities extended by 26 U.S.C. § 414(h) and Chapter 227, Laws of 1984 for deferral of federal income taxes upon employee contributions to the Law Enforcement Officers and Fire Fighters' Retirement Systems, the Washington Public Employees' Retirement System, and the City Employees' Retirement System; authorizing the making of the "employer's pick-up" (payment of the employee's contribution and the making of a corresponding reduction in wages or salaries); making revisions to the City Employees' Retirement System to conform with 26 U.S.C. § 401(a); and adding new sections to the Seattle Municipal Code in connection therewith.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City hereby elects to extend to members of the Law Enforcement Officers and Fire Fighters' Retirement System and the Washington Public Employees' Retirement System employed by the City the tax deferral benefits allowed under 26 U.S.C. § 414(h) and Chapter 227, Laws of 1984 with respect to compensation payable for pay ~~periods~~ warrant dates commencing on or after January 1, 1985 and the Personnel Director is authorized to notify the Director of the Department of Retirement Systems of the State of Washington as to the City's election and to explain the effects of this election to all members of the system. In making this election, the City reserves the power to withdraw its exercise of this option as to each retirement system as contemplated by Section 3(2) of Chapter 227, Laws of 1984, in any later calendar year.

Section 2. There is added to Seattle Municipal Code Chapter 4.20, a new section, designated Section 4.20.600, as follows:

4.20.600 Contributions to LEOFF; PERS--Adjustment for federal income tax purposes. To carry out the City's election to take advantage of the opportunites extended by 26 U.S.C 414(h) and Chapter 227, Laws of 1984 for deferral of federal income taxes upon member's contributions to the Law Enforcement Officers and Fire Fighters' Retirement System and to the Washington Public Employees' Retirement System, the City will pay those members' contributions under RCW 41.26.080(1) and 41.26.450 and RCW 41.40.330(1) and 41.40.650 respectively for pay ~~periods~~ warrant dates commencing on or after January 1, 1985, and will reduce the member's wages or salary by the amount of the City's contribution so paid. The foregoing payment and wage/salary reduction is made under these conditions and limitations:

a. This arrangement is made for purposes of federal income taxation. An employee's wages or salary for purposes of the Federal Insurance Contributions Act (social security tax), the City salary and wage ordinances, and other purposes shall be computed as if the foregoing contribution and corresponding salary or wage reduction had not been made; and

b. The City may withdraw its election to make such adjustments as contemplated by Section 3 (2) of Chapter 227, Laws of 1984, and no affected member shall be entitled to continuance of the adjustment thereafter.

Section 3. There is added to Seattle Municipal code Chapter 4.20 a new section, designated 4.20.610, as follows:

4.20.610 Contributions to City Employees' Retirement System--Adjustments for federal income tax purposes. The City hereby elects to extend to members of the City Employees' Retirement System the tax deferral benefits allowed by 26 U.S.C. 414(h) and Chapter 27, Laws of 1984. For such purposes, the City will pay the member's contributions to the City Employees' Retirement System contemplated by SMC § 4.36.110 for pay ~~periods~~ warrant dates commencing on or after January 1, 1985, and will reduce the member's wages or salary by the amount of the City's contribution so paid. The City contribution made under this section, plus accumulated interest, shall be paid to a member upon the withdrawal of the member's documented contributions pursuant to SMC § 4.36.190.

An employee's wage or salary for purposes of the Federal Insurance Contributions Act (social security tax), for purposes of workers' compensation, and for all purposes other than federal income taxation shall be computed as if the foregoing contribution and corresponding reduction in a member's wage or salary had not been made.

The City reserves the right to discontinue this arrangement for a City contribution and corresponding wage or salary reduction at any time as to compensation earned afterwards. No affected member shall have any contract right to compel the City to continue the arrangement should the City decide to pay the member his or her full salary or wage and then require that the member pay to the City Employees' Retirement System the member's contribution contemplated by SMC § 4.36.110.

Section 4. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.360, as follows:

4.36.360. Trust fund. The retirement fund shall be a trust fund for the exclusive benefit of the members of the City Employees' Retirement System and their beneficiaries. No part of the corpus or income of the retirement fund shall be used for or diverted to, purposes other than for the exclusive benefit of the members of the system or their beneficiaries and the payment of fees and expenses of maintaining and administering the system.

This section shall be interpreted to allow the following:

(1) A return of a contribution to the City or its application as a credit on future contributions, after the Board determines that the City has paid or over-paid the contribution under a mistake of fact;

(2) The making of refunds required by law; and

(3) Termination of the retirement system and distribution of its assets after all liabilities with respect to the members of the retirement system and their beneficiaries have been satisfied.

Section 5. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.370, as follows:

4.36.370 Status of benefits in event of termination of system. If the City terminates or partially terminates the retirement system, members shall have a nonforfeitable right to benefits accrued prior to the date of such termination or partial termination, to the extent funded as of that date, or the amounts credited to the employees' accounts. As used in this section, "terminate" means to discontinue the system completely without a comparable replacement plan; "partially terminate" means to exclude a segment of employees from coverage without the provision of a comparable replacement; and "nonforfeitable" means that a member's or beneficiary's right to an immediate or deferred benefit that arises from the member's City service is unconditional and legally enforceable against the retirement system to the extent then accrued, except that rights to a benefit based upon the City's contribution and completion of a minimum term of City service may be lost by death of the member before the term has expired.

Section 6. There is added to Seattle Municipal Code Chapter 4.36, a new section, designated Section 4.36.380, as follows:

4.36.380 Maximum benefits payable. The maximum benefits payable to any member shall not exceed the limitation for defined benefit plans for qualified pension trusts established by 26 U.S.C. § 415, a copy of which is attached hereto as Appendix "A" and by this reference incorporated herein.

The Board of Administration shall determine this limitation, advise members on inquiry as to its amount, and include a general description of the limitations in its annual report to members.

Section 7. Any action consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 8. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 29th day of October, 1984, and signed by me in open session in authentication of its passage this 29th day of October, 1984.

President of the City Council.

Approved by me this 8th day of November, 1984.

Mayor.

Filed by me this 8th day of November, 1984.

Attest: City Comptroller and City Clerk.

(SEAL)

By Robert J. Mottelsta Jr. Deputy Clerk.

Publication ordered by TIM HILL, Comptroller and City Clerk.
Date of official publication in Daily Journal of Commerce, Seattle, November 10, 1984.
(C-626)

C-626

Affidavit of Publication

STATE OF WASHINGTON
KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter refered to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 111992

was published on November 10, 1984

S. Blair

Subscribed and sworn to before me on

November 10, 1984

Yvonne Summers

Notary Public for the State of Washington,
residing in Seattle.